

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARY KATHLEEN KIRBY,

Plaintiff,

v.

**J.C. PENNEY CORPORATION,
INC.**

Defendant.

02: 08-cv-1088

VERDICT SLIP

We the Jury, empaneled in the above captioned case, do find as follows:

1. HAS IT BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT DEFENDANT J.C. PENNEY INTENTIONALLY DISCRIMINATED AGAINST PLAINTIFF, MARY KATHLEEN KIRBY, BECAUSE OF HER RACE WHEN IT TERMINATED HER EMPLOYMENT?

Yes ✓

No

IF YOU ANSWERED "YES" TO QUESTION 1, PROCEED TO QUESTION 2, AND YOU MUST ANSWER "YES" TO EITHER QUESTION 2 OR QUESTION 3.

IF YOU ANSWERED "NO" TO QUESTION 1, PLAINTIFF CANNOT RECOVER DAMAGES ON HER WRONGFUL TERMINATION/ RACE DISCRIMINATION CLAIM AND YOU SHOULD SIGN THIS VERDICT AND SUMMON THE COURTROOM DEPUTY.

2. HAS IT BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT MARY KATHLEEN KIRBY'S RACE, CAUCASIAN, WAS A DETERMINATIVE FACTOR IN J.C. PENNEY'S DECISION TO TERMINATE HER EMPLOYMENT?

"RACE WAS A DETERMINATIVE FACTOR" ONLY IF YOU DETERMINE THAT J.C. PENNEY WOULD NOT HAVE TERMINATED MS KIRBY'S EMPLOYMENT BUT FOR HER RACE. IT DOES NOT REQUIRE THAT RACE WAS THE ONLY REASON FOR THE DECISION MADE BY J.C. PENNEY.

YOU MAY FIND THAT RACE WAS A DETERMINATIVE FACTOR IF IT HAS BEEN PROVED THAT J.C. PENNEY'S STATED REASON FOR ITS DECISION IS NOT THE REAL REASON, BUT IS PRETEXT TO HIDE RACE DISCRIMINATION.

Yes _____

No ☒ _____

IF YOU ANSWERED "YES" TO QUESTION 2, SKIP QUESTIONS 3 AND 4, AND CONTINUE ON TO QUESTIONS 5 AND 6.

IF YOU ANSWERED "NO" TO QUESTION 2, PROCEED TO QUESTION 3.

3. HAS IT BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT MARY KATHLEEN KIRBY'S RACE, CAUCASIAN, WAS A MOTIVATING FACTOR IN J.C. PENNEY'S DECISION TO TERMINATE HER EMPLOYMENT?

"RACE WAS A MOTIVATING FACTOR" IF MS. KIRBY'S RACE PLAYED A PART [OR PLAYED A ROLE] IN J.C. PENNEY'S DECISION TO TERMINATE HER EMPLOYMENT. HOWEVER, MS. KIRBY'S RACE NEED NOT HAVE BEEN THE ONLY REASON FOR J.C. PENNEY'S DECISION TO TERMINATE MS. KIRBY'S EMPLOYMENT.

YOU MAY FIND THAT RACE WAS A MOTIVATING FACTOR IF IT HAS BEEN PROVED THAT J.C. PENNEY'S STATED REASON FOR ITS DECISION IS NOT THE REAL REASON BUT IS A PRETEXT TO HIDE RACE DISCRIMINATION.

Yes ☒ _____

No _____

IF YOU ANSWERED "YES" TO QUESTION 3, PROCEED TO QUESTION 4.

IF YOU ANSWERED "NO" TO QUESTION 3, PLAINTIFF CANNOT RECOVER DAMAGES AND YOU SHOULD SIGN THIS VERDICT AND SUMMON THE COURTROOM DEPUTY.

4. HAS IT BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT J.C. PENNEY WOULD HAVE TERMINATED MS. KIRBY REGARDLESS OF HER RACE?

Yes _____

No ☒ _____

IF YOU ANSWERED "YES" TO QUESTION 4, PLAINTIFF CANNOT RECOVER DAMAGES AND YOU SHOULD SIGN THIS VERDICT AND SUMMON THE COURTROOM DEPUTY.

PROCEED TO QUESTIONS 5 AND 6 ONLY IF YOU ANSWERED "YES" TO QUESTION 2; OR IF YOU ANSWERED "YES" TO QUESTION 3 AND "NO" TO QUESTION 4.

5. IF YOU FOUND THAT PLAINTIFF WAS DISCRIMINATED AGAINST BY DEFENDANT BECAUSE OF HER RACE, STATE THE AMOUNT OF MONETARY DAMAGES, IF ANY, WHICH YOU AWARD TO HER FOR COMPENSATORY DAMAGES (I.E., PAIN AND SUFFERING, EMBARRASSMENT, HUMILIATION, EMOTIONAL AND MENTAL ANGUISH).

\$ 100

6. WHAT AMOUNT, IF ANY, DO YOU ASSESS AGAINST DEFENDANT J.C. PENNEY FOR PUNITIVE DAMAGES AS THAT TERM IS DEFINED IN THE COURT'S INSTRUCTIONS?

\$ 100

Franklin Perry
FOREPERSON
Donna Filgar
Patricia A. Tsvetzkij
Robert M. Miller

Nancy Blank
Lisa R. Brinkley
Jay R. Lansberry
M. Katherine Hester

DATED: November 6, 2009